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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NICK J. PUDAR

Appeal 2011-002003
Application 09/870,377
Technology Center 3600

Before TERRY J. OWENS, HUBERT C. LORIN and
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 The Appellant appeals under 35 U.S.C. § 134 from the Examiner's
3 decision finally rejecting claims 26-42 under 35 U.S.C. § 103(a) as being
4 unpatentable over Dimitriadis (US 5,664,948, issued September 9, 1997) and
5 Hite (US 5,774,170, issued Jun. 30, 1998). The remaining claims are
6 cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

1 Claim 26 is typical of the claims on appeal:

2 26. A radio system for a vehicle to
3 provide broadcasted radio programming and
4 advertising content to an occupant of the vehicle,
5 comprising:

6 a vehicle radio having an input for receiving
7 audio data and at least one output for providing
8 audio signals representative of the received audio
9 data;

10 a radio broadcast receiver having an antenna
11 for receiving two or more radio broadcast streams,
12 with a first one of the radio broadcast streams
13 including radio advertisements and a second one of
14 the broadcast streams including audio content that
15 contains intermittent advertising slots each
16 identified by a marker contained with that
17 broadcast stream, the radio broadcast receiver
18 being coupled to the input of the vehicle radio to
19 provide the vehicle radio with the received audio
20 content; and

21 an advertising control unit connected to said
22 radio broadcast receiver to receive at least some of
23 the radio advertisements contained in the first
24 radio broadcast stream, said advertising control
25 unit including a recording device which stores
26 radio advertisements received from said radio
27 broadcast receiver;

28 wherein, upon receipt of one of the markers
29 contained within the second broadcast stream, said
30 advertising control unit is operable to access one of
31 the stored radio advertisements, with the accessed
32 radio advertisement being inserted into the
33 advertising slot identified by the received marker
34 so that the accessed radio advertising is included
35 within the audio content sent to the input of the
36 vehicle radio.

1 The Appellant is correct in contending (*see* App. Br. 9) that
2 Dimitriadis fails to describe a system including an advertising control unit
3 “operable to access one of the stored radio advertisements, with the accessed
4 radio advertisement being inserted into the advertising slot identified by the
5 received marker *so that the accessed radio advertising is included within the*
6 *audio content sent to the input of the vehicle radio.*” (Italics added.) Even
7 assuming that Dimitriadis’ amplifier 68 most closely corresponds to the
8 vehicle radio recited in claim 26, Figure 2 of Dimitriadis depicts the audio
9 content or voice signal 66 entering the amplifier 68 separately from the
10 advertising content routed through the advertisement or message
11 presentation block 104. At the very least, Dimitriadis fails to describe any
12 inclusion of accessed radio advertisement with the audio content or voice
13 signal 66 before the audio content is sent to the amplifier 68.

14 As the Appellant points out, this functional distinction implies a
15 structural difference between Dimitriadis’ amplifier 68 and the vehicle radio
16 recited in claim 26. Dimitriadis’ amplifier 68 requires an auxiliary input for
17 receiving the accessed radio advertisement. The vehicle radio recited in
18 claim 26 receives the accessed radio advertisement, albeit included within
19 the audio content sent to the input of the vehicle radio, without requiring an
20 auxiliary input for receiving the accessed radio advertisement. (*See* App. Br.
21 9). “While it may often be true that the mere omission of an element
22 together with its function does not produce a patentable invention, it may
23 also be unobvious to omit an element while retaining its function.” *In re*
24 *Edge*, 359 F.2d 896, 899 (CCPA 1966).

25 As the Appellant points out (*see* App. Br. 9), the Examiner’s
26 motivation statements fail to mention any reason why one of ordinary skill

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1 in the art might have incorporated into a radio system for a vehicle an
2 advertising control unit “operable to access one of the stored radio
3 advertisements, with the accessed radio advertisement being inserted into the
4 advertising slot identified by the received marker so that the accessed radio
5 advertising is included within the audio content sent to the input of the
6 vehicle radio.” (See, e.g., Ans. 10-11, 14-15 and 22-23). Even assuming
7 that the Examiner is correct in finding that “Hite also discloses inserting
8 advertisements into the broadcast stream at the marked locations and
9 transmitting the combined data stream to the vehicle radio” (Ans.
10 21)(underlining omitted), the Examiner has provided no reason why one of
11 ordinary skill in the art familiar with the teachings of Dimitriadis and Hite
12 might have had reason to modify Dimitriadi’s system so as to include the
13 accessed radio advertising within the audio content sent to the input of an
14 element corresponding to the recited vehicle radio.

15 We do not sustain the rejection of claims 26-42 under § 103(a) as
16 being unpatentable over Dimitriadis and Hite. In view of this decision, we
17 do not address any procedural issues relating to the rejection of claims 26-42
18 in the wake of our Decision in *Ex Parte Pudar*, Appeal No. 2008-0410,
19 mailed April 30, 2008.

20

21 DECISION

22 We REVERSE the decision of the Examiner rejecting claims 26-42.

23

24 REVERSED

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28 Klh